

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT  
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE  
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

FILED BY CLERK

SEP -5 2008

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

MARIE P.,

Appellant,

v.

ARIZONA DEPARTMENT OF  
ECONOMIC SECURITY and  
STARLENE P.,

Appellees.

2 CA-JV 2008-0049  
DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 28, Rules of Civil  
Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. JD200500143

Honorable Joseph R. Georgini, Judge

AFFIRMED

Richard Scherb

Florence  
Attorney for Appellant

Terry Goddard, Arizona Attorney General  
By Amanda Holguin

Mesa  
Attorneys for Appellee Arizona  
Department of Economic Security

E S P I N O S A, Judge.

¶1 Marie P. appeals from the juvenile court’s order of May 1, 2008, terminating her parental rights to her daughter, Starlene P., on grounds of neglect, *see* A.R.S. § 8-533(B)(2); mental illness and mental deficiency, *see* § 8-533(B)(3); and both nine- and fifteen-month out-of-home placement, *see* § 8-533(B)(8)(a) and (b). On appeal, Marie challenges the termination order, contending the Arizona Department of Economic Security (ADES) failed to prove by clear and convincing evidence that it had made all reasonable efforts to preserve the family. We affirm.

¶2 Viewed in the light most favorable to upholding the juvenile court’s ruling, *see In re Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994), the evidence established that, in August 2005, Child Protective Services (CPS) received a report that seven-year-old Starlene had been molested at school by several boys. The resulting investigation led CPS to remove Starlene from the home of her maternal grandparents, Stella and David, where she also lived with Marie and Marie’s sister.

¶3 The dependency petition ADES filed in August alleged the family home was filthy, dangerous, in “deplorable” condition, and unfit for habitation; Starlene had been exposed to recurring episodes of domestic violence; Marie had failed to protect her from being exposed to pornographic material, sexualized, and “taught inappropriate behavior by adults in the home”; and Marie was unable to parent due to mental illness. Starlene was adjudicated dependent in October after Marie “submitted” rather than contesting the dependency petition.

¶4 By December 2005 when Velma Estrada took over as case manager, services had already been established for Marie. They included a psychological evaluation, parenting instruction, visitation with Starlene, and transportation assistance. The initial case plan goal of family reunification required Marie to participate in those services, stabilize her mental health, and obtain safe housing for herself and Starlene.

¶5 As part of its effort to reunify the family, ADES obtained psychological evaluations of not only Starlene and Marie but of Marie's parents as well. Starlene was evaluated by psychologist Lorraine Fox-Shipley in March 2007. Noting the child was then "on quite a number of very heavy duty psychotropic med[ication]s," Fox-Shipley found Starlene to have severe emotional, behavioral, social, educational, and possibly neurological deficits. Fox-Shipley testified that Starlene's special needs required "a lot of structure, boundaries, limits, [and] supervision" and "parenting skills that are above average." Indeed, Fox-Shipley testified, Starlene's primary caregivers were likely to need occasional "respite service."

¶6 Dr. Andres Kerns evaluated Marie and her parents in October 2005. Kern estimated Marie's intelligence to be in the low-average range and concluded she suffered from post-traumatic stress disorder (PTSD) and a dysthymic disorder, both of which created obstacles to her parenting. In addition, he testified, she lacked insight, had some difficulty in daily functioning, and seemed unable to genuinely internalize the need to make any changes in her behavior. Based on her lack of insight, her significant and disabling mental

health issues, her history of being exploited in relationships, and her past behavior, Kerns believed Marie's prognosis for ever becoming an adequate parent was poor.

¶7 With respect to Marie's parents, Kerns testified that, in addition to other concerning findings, both David and Stella were defensive, suspicious, and had paranoid tendencies and that Stella was actually delusional. He found neither of them had insight into Starlene's serious difficulties or into the health and safety hazards existing in the family home. Kerns testified he would have significant concerns about Stella as the primary caregiver for a child. Without substantial changes in Stella's insight, world view, and behavior, Kerns believed that Starlene would continue to be neglected and endangered in her grandmother's home and that Stella would "probably interfere" in Starlene's care.

¶8 Based on his evaluations of all three family members, Kerns concluded that Marie was unable to parent Starlene "completely independently" but that continuing to reside with her parents would "make it much more difficult" for her to achieve the "modification of insight [and] circumstances" necessary for her to parent more effectively. As Marie's best hope for separating herself from her parents and becoming able to parent more independently, Kerns testified Marie would need "intensive independent living skill instruction with coaching, modeling, frequent feedback, . . . considerable follow-up[, a]nd probably significant parenting skills training," in addition to continued counseling for her PTSD. Absent significant changes by both Marie and her parents, Kerns believed Marie was

unlikely to be able to achieve reunification with her daughter in the existing family environment.

¶9 In response to Kerns’s evaluation and recommendations, Estrada prepared a subsequent case plan offering Marie additional services. Those included continued individual counseling, specific training in independent-living and life-management skills, and referrals to agencies that could offer her education and support in recognizing and dealing with Starlene’s serious behavioral issues.

¶10 Relying on both Kerns’s conclusions and her own observations, Estrada testified that Marie needed “to be more independent, to make decisions for her child on her own without the influence of her mother.” Estrada encouraged Marie to work toward being able to live by herself so she could provide a safe, sanitary, and appropriate home for Starlene, which the grandparents’ home was not, and could parent without the interference of her domineering, mentally ill mother.

¶11 The services offered to Marie—parenting classes, parent aide services, transportation assistance, counseling, independent-living-skills and life-management-skills instruction, visitation with Starlene, and resources for dealing specifically with Starlene’s disabilities<sup>1</sup>—included all of those Kerns had recommended, and more. Targeting Marie’s dependence on her mother in particular, the independent-living-skills training ADES offered

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<sup>1</sup>As the case manager testified, when she assumed the case in November 2005, Starlene had been placed in a psychiatric unit in Phoenix for thirty days, yet Marie seemed not to grasp the severity of her daughter’s emotional and psychiatric issues.

was intended to provide the tools necessary for her to achieve independence. That program included information about employment, “how to get housing, how to budget, how to run a household, how to buy groceries, how to live independently,” and “how to access community resources.”

¶12 Estrada testified about multiple conversations with Marie emphasizing the need for her to become more independent if Starlene were to be returned to her. But Marie had maintained she could not move away from her parents because they could not live without her disability income, she would be unable to take care of Starlene without Stella’s help, and she was unable to live on her own, away from her parents.

¶13 Thus, despite Estrada’s urgings, Marie declined many of the services ADES offered her. She refused repeatedly to participate in parenting classes, eventually agreeing only after Stella told her she should. She “steadfastly refused” to look into other housing, claiming “she would not be able to live any other place except with her mother.” And, in September 2006, she abruptly discontinued her individual counseling because she claimed not to like a new counselor who had replaced the previous one. Although Estrada informed Marie that participating in counseling and other services was critical if the family were to be reunified, Marie told Estrada “she had [had] enough counseling and would not engage in any[]more.”

¶14 Marie also flatly and repeatedly refused to engage in independent-living-skills and life-management-skills training, which she “felt . . . she did not need . . . because she

would continue to live with her parents.” Over the course of the dependency proceeding, she continued to refuse any such training. Consequently, Marie was never able to “demonstrate that she would be able to apply for housing, seek employment, [or] learn to do budgeting,” nor could she show any amelioration in the conditions that had led to Starlene’s removal from the home in August 2005.

¶15 Despite having thus rejected many of the services offered to her on Kerns’s recommendation, Marie contends on appeal that ADES failed to offer her “a specialized case plan” with “appropriate services that would ensure a reasonable prospect of success”—a plan, Marie apparently envisions, that would somehow have overcome her refusal to participate in the very services Kerns had recommended. As authority for her argument, Marie relies heavily on *Mary Ellen C. v. Arizona Department of Economic Security*, 193 Ariz. 185, ¶ 31, 971 P.2d 1046, 1052 (App. 1999). But the facts of *Mary Ellen C.* are readily distinguishable from these. There, CPS had offered the mother “no significant reunification services for almost a year after removing [the child],” *id.* ¶ 35, and had “neglect[ed] to offer the very services that its consulting expert recommend[ed],” *id.* ¶ 37. Here, in contrast, ADES promptly offered and arranged for all of the services Kerns recommended, but Marie refused to utilize them. The holding of *Mary Ellen C.* is therefore unavailing.

¶16 Marie reasons, circularly, that it was her dependence on her mother that kept her from taking advantage of the various services ADES was offering her to help reduce her

dependence on her mother and improve her ability to parent. Distilled to its essence, Marie's argument is that ADES should have found a way to surmount her refusal and, in effect, have compelled her to participate in the necessary services. Even were such a course feasible,<sup>2</sup> that is not the state's legal obligation. "[A]DES is not required to provide every conceivable service *or to ensure that a parent participates in each service it offers*. The mother's failure or refusal to participate in the programs and services [A]DES offered or recommended does not foreclose termination of her parental rights." *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994) (emphasis added; citation omitted).

¶17 Throughout the dependency proceeding, the juvenile court made interim findings, apparently without objection by Marie, that the efforts ADES was making to preserve and reunify the family were reasonable. Because the court found again after the termination hearing that ADES had "made a diligent effort to provide appropriate reunification services," this court's only function on review is to ensure that reasonable evidence supports the factual findings on which the court's legal conclusions rest. *See Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 927 (App. 2005); *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 2, 982 P.2d 1290, 1291 (App. 1998). We do not reweigh the evidence, and we defer to the fact-finder's resolution

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<sup>2</sup>Stating the obvious, Estrada testified that an unwilling parent cannot be forced to participate in, complete, or benefit from any rehabilitative service.



of any conflicts it contains. *See Vanessa H. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 252, ¶ 22, 159 P.3d 562, 567 (App. 2007); *Lashonda M.*, 210 Ariz. 77, ¶ 16, 107 P.3d at 928; *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002).

¶18 As our recitation of the facts well illustrates, there is substantial evidence in the record to support the juvenile court's finding that ADES was diligent in offering Marie appropriate reunification services. Because the court's factual findings support its legal conclusions, *see Audra T.*, 194 Ariz. 376, ¶ 2, 982 P.2d at 1291, we affirm the court's order terminating Marie's parental rights to Starlene.<sup>3</sup>

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PHILIP G. ESPINOSA, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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<sup>3</sup>To support the termination of Marie's parental rights, ADES was also required to show by a preponderance of the evidence that the termination was in Starlene's best interests. *See* § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). Although Marie did not raise the sufficiency of the evidence to support the juvenile court's best-interests determination as an issue in her opening brief, ADES treated the topic as a discrete issue in its answering brief. Because the issue has not been squarely raised on appeal, we need not address it. We simply note in passing that the testimony of the two psychologists and the case manager supplied substantial evidence to support the court's finding that severing Marie's rights was in Starlene's best interests.

GARYE L. VÁSQUEZ, Judge